APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 351. SURTAX ON PERSONAL HOLDING COMPANIES.

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(b) *Definitions.*—As used in this title—

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(2) The term "undistributed adjusted net income" means the adjusted net income minus the sum of:

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(B) Amounts used or set aside to retire indebtedness incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness; and

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(U. S. C., Title 26, Sec. 331.)

Treasury Regulations 86, relating to the Revenue Act of 1934:

ART. 351–4. *Amounts used or set aside to retire indebtedness incurred prior to January 1, 1934.*—If, pursuant to a bona fide plan for retirement of its bonds, debentures, or similar obligations representing indebtedness incurred prior to January 1, 1934, for the purpose of raising capital (or assumed prior to that date in connection with the acquisition of capital assets by which such indebtedness is secured) the taxpayer—

(1) retires during the taxable year an amount of such indebtedness, or

(2) establishes a sinking fund or reserve for the retirement of such indebtedness during the taxable year, and sets aside in such fund or reserve an amount for the retirement of such indebtedness—

in determining the undistributed adjusted net income for the taxable year a deduction from the adjusted net income is allowable in a reasonable amount in respect of the amount so paid or set aside in such fund or reserve during the taxable year.

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A resolution, specifying the particular indebtedness to be retired, the plan of retirement, and the specific assets to be used for that purpose, passed by the board of directors or corresponding authority during the taxable period or prior thereto, will be considered sufficient to meet the statutory requirement that the amounts must be "set aside". A certified copy of such resolution must accompany the return on Form 1120H.

The burden of proof will rest upon the taxpayer to sustain the deduction claimed.

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ART. 351–4. [As amended by T. D. 4777, 1937–2 Cum. Bull. 196] *Amounts used or set aside to retire indebtedness incurred prior to January 1, 1934.*—(a) *Indebtedness.*—The term "indebtedness" means an obligation, absolute and not contingent, to pay, on demand or within a given time, in cash or other medium, a fixed amount. The term "indebtedness" does not include the obligation of a corporation on its capital stock.

The indebtedness must have been incurred (or, if incurred by assumption, assumed) by the taxpayer prior to January

1, 1934. An indebtedness evidenced by bonds, notes, or other obligations issued by a corporation is ordinarily incurred as of the date such obligations are issued and the amount of such indebtedness is the amount represented by the face value of the obligations. In the case of renewal or other changes in the form of an indebtedness, so long as the relationship of debtor and creditor continues between the taxpayer and his creditor, the giving of a new promise to pay by the taxpayer will not have the effect of changing the date the indebtedness was incurred.

(b) *Amounts used or set aside.*—The deduction is allowable, in any taxable year, only for amounts used or set aside in that year. The use or setting aside must be to effect the extinguishment or discharge of indebtedness. Since, therefore, in the case of renewal and other changes in the form of an indebtedness, the relationship of debtor and creditor continues between the taxpayer and his creditor, the mere giving of a new promise to pay by the taxpayer will not result in an allowable deduction. If amounts are set aside in one year, no deduction is allowable for such amounts for a later year in which actually paid. As long as all other conditions are satisfied, the aggregate amount allowable as a deduction for any taxable year includes all amounts (from whatever source) used and, as well, all amounts (from whatever source) set aside, irrespective of whether in cash or other medium. Double deductions are not permitted.

A resolution, specifying the particular indebtedness to be retired, the plan of retirement, and the specific assets to be used for

that purpose, passed by the board of directors or corresponding authority during the taxable period or prior thereto, will be considered sufficient to meet the statutory requirement that the amounts must be "set aside." A certified copy of such resolution must accompany the return on Form 1120 H.

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(d) *General.*—The burden of proof will rest upon the taxpayer to sustain the deduction claimed. Therefore, the taxpayer must furnish the information required by the return, and such other information as the Commissioner may require in substantiation of the deduction claimed.

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